



GenOn Kendall, LLC
265 First Street
Cambridge, Massachusetts 02142
T 617 679 4888 F 678 579 5994

April 17, 2012

Mr. George Harding
EPA New England, MC OES04-4
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Mr. Bryant Firman
Department of Environmental Protection
Central Regional Office
627 Main Street
Worcester, MA 01608

Delivery: By Email with FedEx to Follow

**Subject: GenOn Kendall, LLC
USEPA Region 1 DOCKET NO. 11-005
Mass DEP File No. UAO-BO-11-1N001
NPDES Permit No. MA0004898
Proposed Amendment to Administrative Orders**

Dear Mr. Harding and Mr. Firman:

By letter dated December 16, 2011, GenOn Kendall, LLC ("GenOn" or the "Company") notified you that Veolia Energy Boston, Inc. ("Veolia") had decided to change the steam pipeline route from that described in the United States Environmental Protection Agency ("USEPA") Region 1 Administrative Order issued on January 31, 2011 (the "USEPA Order") and the Unilateral Administrative Order issued by the MassDEP on the same day (the "MassDEP Order"). As you know, the original pipeline route exited the Kendall Cogeneration Station ("Station"), crossed the Charles River over the Longfellow Bridge ("Longfellow") and connected thereafter into Veolia's steam distribution system in Boston near the Longfellow (hereinafter, "Longfellow Route"). The revised route exits the Station, continues up Land Boulevard, crosses the Charles River on the Craigie/Dam Bridge and continues on to Nashua Street in Boston (hereinafter, "Craigie Dam Route").¹ GenOn indicated in its December 16th letter that it was examining the Orders to determine the potential impacts of the route change on the requirements of the Orders. The Company also indicated that it would contact USEPA and MassDEP to discuss any changes to the Orders which would be necessary or appropriate in light of the pipeline routing change.

¹ The revised route is over a half mile longer than the original route.

SUMMARY OF DISCUSSIONS TO DATE

On February 16, 2012, representatives from GenOn and Veolia met with representatives of USEPA and MassDEP² for a preliminary discussion of the potential impacts of the route change on the schedule for completion of the pipeline and the timing for issuing a Notice to Proceed³ for the design and fabrication of the back pressure steam turbine ("BPST") and the air-cooled condenser ("ACC").⁴ According to the representative from Veolia, the pipeline project had applied for all but one of its permits and expected to commence construction in March 2012. Veolia indicated that it expected to complete construction of the pipeline by November 2012. Veolia also indicated that completing the pipeline project before March/April 2013 would be desirable in order to avoid delay which could arise thereafter as a result of commencement of the Longfellow Bridge Rehabilitation Project. As discussed by Veolia and GenOn during the meeting, the Longfellow Bridge Rehabilitation Project includes a Traffic Management Plan to ease traffic congestion resulting from the closing of one or more lanes of the Longfellow during the Rehabilitation Project. Vehicles which would normally use the Longfellow Bridge will be rerouted to roadways proximate to the Longfellow including Land Boulevard and Storrow Drive, the latter of which feeds traffic onto Nashua Street. Given the need to use Land Boulevard and Storrow Drive as alternative routes for traffic normally using the Longfellow, MassDOT reportedly plans to place restrictions on activities in those roadways which would interfere with the flow of traffic. Veolia indicated that activities such as street openings to lay pipe would be restricted once the Longfellow Rehabilitation Project begins. GenOn indicated at the meeting that the MassDOT's target date to begin the Longfellow Rehabilitation Project is March/April 2013.

GenOn observed during the meeting that under Veolia's current permitting and construction schedule, construction of the pipeline would begin over two years earlier (March 2012 versus December 2014) than had been assumed during the negotiations leading to the Orders, and the pipeline could begin operation over two years earlier (November 2012 versus June 2015) than had been assumed at that time. GenOn explained that acceleration of the schedule for pipeline completion by approximately two years would accelerate the timeline of the environmental benefits envisioned in the Orders. Specifically, under Section 7 of Appendix A of the Orders, GenOn is required to meet a lower thermal discharge limit beginning as of the eighth month after the Steam Line Completion Date and meet an additional lower limit after one year from the Steam Line Completion Date. GenOn must adhere to that lower thermal discharge limit thereafter under normal operations until the BPST and ACC become operational. GenOn noted that the acceleration of the Steam Line Completion Date would accelerate GenOn's schedule for operating at those lower thermal limits.

² A representative for the Conservation Law Foundation and the Charles River Watershed Association was invited but could not attend due to a scheduling conflict.

³ The current Orders refer to "Notices to Proceed", contemplating that separate Notices would be issued for the BPST and ACC. However, GenOn currently plans to issue a single Notice to Proceed for both pieces of equipment.

⁴ The installation of the BPST and ACC is referred to here as GenOn's Reconfiguration Project.

During the meeting, GenOn voiced some of its concerns regarding the interplay between the acceleration of the pipeline schedule and the timing of issuing a Notice to Proceed for the BPST and ACC under the Orders as written for the Longfellow Route. For the Longfellow Route, Section IV.1.f of the USEPA Order and Section V.1.f of the MassDEP Order required that the Notice to Proceed be issued with 10 days after the latest of the following:

- (i) all Governmental Approvals, other than any necessary building permits, have been obtained, are no longer subject to appeal, and are effective; (ii) all permits and approvals necessary to construct the Approaches [in Cambridge and Boston] have been obtained by Trigen, are no longer subject to appeal and are effective, and (iii) the Massachusetts Department of Transportation or its contractor has begun construction of the Second Pipeline.

Under this language, were construction on the pipeline to commence in April 2012, GenOn would hypothetically have to issue a Notice to Proceed in the May/June 2012 time frame. GenOn currently anticipates having all Governmental Approvals in or around June 2012. GenOn indicated that the final approval it is seeking is a zoning variance from the City of Cambridge. However, only after that process is completed and GenOn knows what conditions, if any, are attached to such variance, can GenOn do the final engineering necessary to commence its competitive procurement process. In addition, the procurement process would take well beyond June 2012 to complete including negotiation and execution of an Engineering Procurement and Construction ("EPC") contract. Therefore, as GenOn noted, based on engineering and procurement timing issues alone, the "triggers" contained in the Orders no longer work for the Craigie Dam Route.

GenOn also explained that the uncertainty of the construction schedule associated with the Craigie Dam Route made the issuance of the Notice to Proceed on start of construction of the pipeline materially more risky than under the Longfellow Route. In particular, if Veolia is unable to complete its work before the Longfellow Rehabilitation Project's Traffic Management Plan restrictions are imposed along the Craigie Dam Route, the completion date for the pipeline construction could be well beyond 2012. As GenOn explained, were GenOn to issue a Notice to Proceed on start of construction of the pipeline, GenOn would be at risk for the BPST and ACC being fabricated, delivered to the site and being ready to install well before the pipeline is operational. As GenOn noted, the performance guarantees for that equipment require testing upon delivery and installation. The BPST and ACC will be designed to operate with the new pipeline in place. As GenOn explained, if the pipeline is not available when it is time to perform such tests, the testing will be impossible. As a consequence, GenOn would be placed in a position of taking delivery of tens of millions of dollars worth of equipment which could not be properly tested, forfeiting the value of the performance guarantees. Therefore, as GenOn described, under the Craigie Dam Route, the trigger of issuing the Notice to Proceed at the start of pipeline construction is not workable. Based on the equipment testing consideration alone, GenOn proposed not issuing the Notice to Proceed until after construction and testing of the pipeline. By the end of that meeting and in a subsequent telephone conference, the USEPA and

MassDEP representatives were focused on accelerating the issuance of the Notice to Proceed as much as possible but said they would consider GenOn's concerns.

On March 30, 2012, at GenOn's request, representatives of USEPA and MassDEP met with GenOn again to discuss further what amendments to the Orders would be necessary and appropriate in light of the Veolia's selection of the Craigie Dam Route. Based on the discussion which occurred during the February 16th meeting, GenOn had performed analyses of the financial viability of the Reconfiguration Project assuming the entire Project schedule was accelerated forward roughly two years. The Company described the impact on the economics of the Project and explained that such acceleration would unequivocally render the Project no longer feasible. GenOn listed a number of factors contributing to that outcome including earlier expenditures for the BPST and ACC and a reduction in Station capacity sooner than anticipated. GenOn is today providing additional relevant information to USEPA and MassDEP as Confidential Business Information.

PROPOSED AMENDMENTS TO THE ORDERS

In light of the impact on the feasibility of the Reconfiguration Project from accelerating the schedule relative to that assumed in the Orders, but recognizing the USEPA's and MassDEP's interest in having the Station come into full compliance with the 2010 NPDES Permit under a reasonable schedule, GenOn hereby proposes to replace the current trigger provision (Section IV.1.f of the USEPA Order and Section V.1.f of the MassDEP Order) with the following language:

f. Issue the Notices to Proceed within 10 days after the later of (i) the date upon which all Governmental Approvals, other than any necessary building permits, have been obtained, are no longer subject to appeal and are effective, and (ii) December 31, 2013, provided, however, that if construction of the Steam Line is not anticipated to be complete by that date solely as a result of construction restrictions arising from the Longfellow Bridge Rehabilitation Project, the Permittee and EPA shall engage in negotiations, commencing not later than October 31, 2013, to agree on a reasonable extension based on EPA's and the Permittee's understanding of the schedule for completion of construction and testing of the Steam Line.

This language is designed to accelerate by a full year the issuance of the Notice to Proceed relative to the original schedule assumed for the Longfellow Route, provided the pipeline has not been unduly delayed by the Longfellow Rehabilitation Project. While this degree of acceleration will still have an adverse impact on the economics of the Reconfiguration Project, the Project is expected to be feasible based on current assumptions. Were this amendment adopted, the Charles River would benefit in two ways. First, if in fact the pipeline project is completed approximately two years early as Veolia currently plans, GenOn's obligation to be operate under reduced thermal limits commences approximately two years early as well. Second, assuming the Notice to Proceed is issued on December 31, 2013, the Station should be

able to come into full compliance with its 2010 NPDES Permit at least one summer earlier than had been anticipated.

GenOn is also proposing two additional amendments of a non-substantive nature:

- In Section II.12 of the USEPA Order and Section III.12 of the MassDEP Order, in the first sentence, insert a comma after the word "Station" and add the words "across the Craigie Dam/Bridge". Delete the remainder of Section II.12 of the USEPA Order and of Section III.12 in the MassDEP Order.
- In Section II.14 of the USEPA Order and in Section III.14 of the MassDEP Order, after the word "means" insert the words "Veolia Energy Boston, Inc." and delete the words "Trigen Boston Energy Corp."

Although these discussions have not been undertaken expressly pursuant to the Dispute Resolution provisions of Section VII.15 of the USEPA Order and Section V.15 of the MassDEP Order, GenOn proposes that these changes be set forth in an agreement to be signed by USEPA, DEP and GenOn and be incorporated into and become an enforceable part of the Orders pursuant to Section VII.16 of the USEPA Order and Section V.16 of the MassDEP Order or by any other means acceptable to USEPA, DEP and GenOn.

We look forward to working with you on finalizing these amendments.

Sincerely yours,



Shawn Konary
Director, Environmental Policy and Regulatory Affairs

Copies:

- R. Fein, USEPA -- Region 1
- D. Webster, USEPA -- Region 1
- G. Papadopoulos, USEPA -- Region 1
- P. Weinberg, MassDEP -- Boston
- R. Brown, MassDEP -- Boston
- G. Kubik, GenOn
- A. Murphy, GenOn
- L. Rajter, GenOn
- D. Sladic, GenOn
- W. Stone, GenOn
- M.B. Gentleman, Foley Hoag
- File